No. 22,259

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LEVINSON'S OWL REXALL DRUGS, INC., RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the United States Court of Appeals for the Ninth Circuit

No. 22,259

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LEVINSON'S OWL REXALL DRUGS, INC., RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*),[1] for enforcement of its order issued against Levinson's Owl Rexall Drugs, Inc., herein re-

[1] Pertinent provisions of the Act are reprinted as Appendix A to this brief, *infra*, pp. 18-20.

ferred to as respondent or Company, on December 6, 1966. The Board's decision and order (R. 56-63)[2] are reported at 161 NLRB No. 133. This Court has jurisdiction of the proceeding, the unfair labor practices having occurred in Napa, California, where the Company is engaged in the business of selling drugs, cameras, and other products at retail. No jurisdictional issue is presented.

STATEMENT OF THE CASE

I. The Board's Findings of Fact

Briefly, the Board found that the Company violated Section 8(a)(1) of the Act by interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7. The Board further found that the Company violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employee Beverly Marsh to discourage membership in or activities on behalf of the Union.[3] The evidence upon which the Board's findings are based is summarized below.

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[2] References to the pleadings, decision and order of the Board, the Trial Examiner's recommended decision and order, and other papers reproduced as "Volume I, Pleadings," are designated "R." References to portions of the stenographic transcript reproduced pursuant to Court Rules 10 and 17 are designated "Tr." References designated "GCX" and "RX" are to exhibits of the General Counsel and respondent, respectively. Whenever in a series of references a semicolon appears, those preceding the semicolon are to the Board's findings; those following are to the supporting evidence.

[3] Retail Store Employees Union, Local 373, Retail Clerks International Association, AFL-CIO.

A. *The advent of the Union; the Company's coercive antiunion campaign*

In March 1965,[4] the Union began an organizational campaign among the employees of the Company at its Bel-Air Shopping Center store (R. 16; Tr. 469).[5] In April, a number of the employees signed cards authorizing the Union to be their collective bargaining representative (R. 16; Tr. 469, GCX 2, 4, 7). During the Union's organizing campaign in April, Company Secretary-Treasurer and Store No. 2 Manager John Frommelt called employee Anita Joyce Baierline into the employee coffee room and, with the door closed, inquired whether she had been approached by the Union (R. 15-16; Tr. 90). When Baierline replied in the negative, Frommelt stated that the Union would probably communicate with her. He told her that if the store became unionized the employees would make less money, besides having to pay dues. Frommelt also stated that it was possible that employees' "P.M.'s would be taken away." [6] He further stated that the Company had never been unionized and did "not intend to become Union now," and that if he should learn that Baierline was "for the Union" she would be "fired." (R. 16; Tr. 90-91).

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[4] Unless otherwise noted, all dates herein refer to 1965.

[5] The Company operates two stores in Napa. The Bel-Air Shopping Center store, also referred to in the record as Store No. 2, is involved in this proceeding. The other store, referred to in the record either as Store No. 1 or the main store, is not involved herein (Tr. 151-152).

[6] P.M. refers to premium money paid by certain companies when their products are sold; P.M.'s are paid to employees in addition to their regular wages (Tr. 91).

On the same day, John Frommelt called employee Charlotte McDonald into the employee coffee room and inquiringly stated that he assumed she knew that the Union was contacting the Company's employees. When McDonald answered affirmatively, he remarked that "any extra wages [the employees] might make joining the Union [they] would just pay back . . . in dues, that Levinson's was not Union, that they would never be Union and if [McDonald] had any intentions of joining a Union or trying to get a Union in the store, [she] would no longer have a job there." (R. 16; Tr. 9-11).

On the same day, Store Manager Frommelt also called employee Beverly Marsh into the employee coffee room and, like employees Baierline and McDonald, was interviewed in private. Frommelt alluded to her "many years" of employment and stated that "the Union has become active again—[the Company] would appreciate [her] loyalty in this matter. [The Company] just [doesn't] want any Union . . . [she] knew how [the Company] felt about the Union." [7] (R. 16, 57; Tr. 35, 37, 45).

In addition, John Frommelt interrogated employees Carl Shimell and Lillian Beem as to whether they were contacted by the Union (R. 16-17; Tr. 131, 307). Altogether, John Frommelt separately and

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[7] Marsh testified that in 1957 or 1958, the Union attempted to organize the Company's employees at Store No. 1; at that time, Store Manager Al Frommelt told Marsh, who was then employed at Store No. 1, that the store was not union, had no intention of becoming union, and that the employees would be dismissed if a union contract were signed (Tr. 38-40).

privately interviewed 7 or 8 of the 11 nonsupervisory store employees concerning their Union affiliation and activities (R. 16; Tr. 242-243).

During the Union's organizational campaign, the Company required job applicants to fill in an employment application form, which included a question as to the applicant's "union affiliation" and a space for his reply. During the 6-month period prior to date of service of the charge in this proceeding, 24 individuals applied for jobs and executed the employment application form, of which 8 left the union affiliation space blank, 2 indicated a union affiliation, and 14 answered in the negative (R. 15; Tr. 138, 141-142, GCX 5(a), 5(b), 5(c)).

On May 3, the Union distributed a leaflet, dated May 1, to the Company's employees, wherein it set forth wage rates and medical, retirement, holiday, vacation, and arbitration benefits provided in a union contract and the suggestion that they be compared with those provided by the Company (R. 21; Tr. 470, GCX 3).

B. *The discharge of union adherent Beverly Marsh*

Beverly Marsh was first employed by the Company in August 1946 and quit in March 1948, went back to work with the Company in March 1954 and terminated her employment in September 1961, and again reentered employment in July 1963. During most of her long tenure of employment with the Company, including her last period of employment, Marsh worked in the camera department (Tr. 33). On April 13, 1965, she signed a union authorization card (GCX 4).

A few days after receiving the Union leaflet dated May 1, Marsh brought it to the store with a view to discussing its contents with management. During a discussion with Assistant Store Manager Robert Frommelt concerning the leaflet, Marsh remarked that Levinson's "didn't seem to stack up too well" with the benefits being offered by the Union (R. 21, 57; Tr. 45-46, 391). Frommelt defended the store's current employee benefits, while Marsh compared the Company's benefits unfavorably with those offered by the Union in the leaflet. She specifically mentioned that her wages were lower than those shown in the leaflet; nor were the Company's hospital benefits adequate (R. 21; Tr. 47, 391).

On June 25, Marsh prepared unsold greeting cards for return to the supplier, for which the store would receive credit, dividing the cards into separate groups. She prepared necessary instructions for shipment and gave them, with additional instructions to ship the packages separately, to the employee who packs and ships store merchandise. Each package was shipped by parcel post, rather than by freight in a single package, which resulted in an additional shipping cost of $7 or $8 (R. 21; Tr. 54, 437-439, 442-443, 447). Shortly thereafter, Store Manager John Frommelt approached Marsh at the camera department and loudly and angrily berated her for causing the unnecessary shipping cost expenditure (R. 21-22, 57; Tr. 55, 169-170). Frommelt then walked out of the store (Tr. 55, 170, 219). Marsh, who was emotionally upset because of the reprimand, telephoned her physician and was advised to come to his office

immediately (R. 22, 57; Tr. 55-56). Unable to locate either John or Robert Frommelt in the store, Marsh told Floorlady Helen Duncan to inform John Frommelt that she was leaving the store (R. 22, 57-58; Tr. 56, 283). She left the store about 4:40 p.m., and went to her physician's office (R. 22, 58; Tr. 56). Marsh returned to the store after an absence of approximately 20 minutes of her working time,[8] sought out John Frommelt, and asked him not to admonish her publicly again. Frommelt thereupon discharged her for the stated reason of her absence from work (R. 22-23, 58; Tr. 58, 182, 208, 210).

II. The Board's Conclusions and Order

The Board, in agreement with the Trial Examiner, found that during the course of the Union's organizational campaign in April 1965, the Company violated Section 8(a)(1) of the Act by interrogating employees in private interviews as to whether they had been contacted by the Union, by interrogating job applicants as to their union affiliation, by stating to employee Baierline that premium pay would be discontinued in the event of unionization, by threatening to discharge Baierline if the Company found out that she favored the Union, by stating to employee McDonald that she "would no longer have a job" at the store if she had any intention of joining a union or "trying to get [one] in the store," and by telling these

[8] Marsh returned to the store at about 5:55 p.m. Her regularly scheduled dinner period was from 5:00 to 6:00 p.m. Her absence during working time was therefore about 20 minutes. (R. 22; Tr. 57-58, 182).

two employees that the Company would never be unionized.[9] The Board, contrary to the Trial Examiner, also found that the reason given by the Company for discharging employee Beverly Marsh—her 20-minute absence from work—was a pretext to conceal its determination to rid itself of a senior employee because she revealed herself as a Union adherent in spite of the Company's unlawful attempt to dissuade employees, and that she was, in fact, discharged on June 25, 1965, during the organizational campaign among the Company's employees, in order to discourage membership in or activities on behalf of the Union, in violation of Section 8(a)(3) and (1) of the Act. (R. 20, 28, 56-57, 58-59).

The Board's order requires the Company to cease and desist from the unfair labor practices found and from in any other manner interfering with, restraining, or coercing its employees in the exercise of their statutory rights. Affirmatively, the order requires the Company to offer reinstatement to employee Beverly Marsh, to make her whole for any loss of pay suffered

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[9] At the Board hearing, the Trial Examiner granted the General Counsel's motion to amend the complaint by adding the allegation that "on or about April 2, 1965, in Respondent's Store No. 2, John A. Frommelt interrogated an employee concerning his Union membership, interest and activity, and threatened to terminate that employee if he selected the Union to represent him for purposes of collective bargaining or if he gave any aid or assistance to the Union" (Tr. 370, 377). The Board, in agreement with the Trial Examiner, dismissed this portion of the complaint (R. 19, 62).

as a result of the discrimination against her, and to post appropriate notices. (R. 60-61).

ARGUMENT

Substantial Evidence on the Record as a Whole Supports the Board's Finding That the Company Violated Section 8(a)(3) and (1) of the Act by Discharging Employee Beverly Marsh to Discourage Membership In or Activities on Behalf of the Union

As shown in the Statement, in April of 1965 many of the Company's employees began signing Union authorization cards and engaging in other organizational activity to select the Union as a collective bargaining spokesman. The Trial Examiner found that thereafter the Company, primarily through Store Manager John Frommelt, prevented the employees' complete freedom of choice, in violation of Section 8(a)(1) of the Act, by coercively interrogating applicants for employment and current employees concerning their union activity and views, telling employees that the Company would never accept unionization, and threatening employees with loss of job benefits and their jobs if they supported the union effort. The Company filed no exceptions to the Trial Examiner's findings that it had engaged in this clearly unlawful conduct. The General Counsel and the Union, however, filed exceptions to, *inter alia*, the Trial Examiner's dismissal of the allegation that employee Beverly Marsh had been discharged to discourage union activity. The Company submitted a brief in answer to these exceptions in which it urged affirmance of the Trial

Examiner's decision and entered no cross-exceptions to his findings of violations of Section 8(a)(1), which, accordingly, were adopted by the Board. In these circumstances, under the statute and Board procedures promulgated thereunder,[10] those 8(a)(1) findings are final and not subject to attack in the reviewing court.[11] Thus, the only issue presented is the propriety of the Board's finding that Marsh was discharged for anti-union reasons, in violation of Section 8(a)(3) and (1). We show below that the record amply supports that finding.[12]

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[10] See Section 10(c) and (e) of the Act, *infra* pp. 18-20, and Rules and Regulations of the National Labor Relations Board, as amended, Section 102.46 and 102.48(a) (29 C.F.R., Part 102, Sec. 102.46 and 102.48(a)), and specifically Section 102.46(h) which provides that "No matter not included in exceptions or cross-exceptions may thereafter be urged before the Board, or in any further proceeding."

[11] See e.g., *N.L.R.B.* v. *International Association of Machinists, Lodge 942, AFL-CIO,* 263 F. 2d 796, 798-799 (C.A. 9), cert. denied, 362 U.S. 940; *N.L.R.B.* v. *Carroll-Naslund Disposal, Inc.,* 359 F. 2d 779 (C.A. 9), enforcing 152 NLRB 861; *American Fire Apparatus Co.* v. *N.L.R.B.,* 380 F. 2d 1005, 1006 (C.A. 8). See also, *N.L.R.B.* v. *International Union of Operating Engineers, Local 66, etc.,* 357 F. 2d 841, 846 n. 10 (C.A. 3).

[12] The Board's disagreement with the Trial Examiner on this issue does not significantly detract from the substantiality of the support for the Board's result. The Examiner's resolution of conflicting testimony was not disturbed. The disagreement related solely to the inferences to be drawn from the whole record and the proper application of the statute. In such a case, "the presumptively broader gauge and experience of members of the Board have a meaningful role." *Oil, Chemical & Atomic Workers Int'l. Union, Local 4-243* v. *N.L.R.B.,* 362 F. 2d 943, 946 (C.A. D.C.). Accord: *Cheney*

The discharge of a leading union adherent in a small unit of employees is a classic method of undermining an organizational campaign. Marsh was conspicuous in her support of the Union, but the Company contended that the sole reason for her discharge was, as she was informed at the time, her 20 minute absence during working hours. The Board, however, after full consideration of the proffered explanation, found that this was simply a pretext with which the Company sought to conceal its discriminatory purpose. The issue, therefore, is the real reason for the discharge: "[t]he existence of some justifiable ground for discharge is no defense if it was not the moving cause." *N.L.R.B.* v. *Security Plating Co.*, 356 F. 2d 725, 728 (C.A. 9); *N.L.R.B.* v. *Tonkin Corp.*, 352 F. 2d 509, 511 (C.A. 9). This issue is one of fact, as to which the Board's determination, if supported by substantial evidence including all inferences fairly drawn from that evidence, is entitled to affirmance.[13] As this Court has repeatedly recognized: "When supported by credible evidence, the Board's choice between two conflicting views may not be displaced, 'even though

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California Lumber Co. v. *N.L.R.B.*, 319 F. 2d 375, 377 (C.A. 9); *F.C.C.* v. *Allentown Broadcasting Corp.*, 349 U.S. 358, 364; *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 496. Cf. *N.L.R.B.* v. *Tom Johnson, Inc.*, 378 F. 2d 342, 343-344 (C.A. 9).

[13] As this Court has stated, "[T]he Supreme Court . . . has laid to rest, quite properly, any contention that the uncontradicted evidence of an employer as to his motive for a certain course of action must be accepted by the Board." *Bon Hennings Logging Co.* v. *N.L.R.B.*, 308 F. 2d 548, 554 (C.A. 9).

the court would justifiably have made a different choice had the matter been before it *de novo.*'" *N.L.R.B.* v. *Howell Chevrolet Co.*, 204 F. 2d 79, 85, affd. 346 U.S. 482; *N.L.R.B.* v. *U.S. Divers Co.*, 308 F. 2d 899, 905; *Shattuck Denn Mining Corp.* v. *N.L.R.B.*, 362 F. 2d 466, 469-470 (C.A. 9); *Aeronca Mfg. Co.* v. *N.L.R.B.*, —— F. 2d —— (C.A. 9), No. 21,305, November 1, 1967, 66 LRRM 2574. We show below that the Board's finding has the requisite evidentiary support.

As shown in the Statement, *supra*, pp. 4, 5, on April 13, Marsh signed a union authorization card. Subsequently, Store Manager John Frommelt called Marsh from her counter at the camera department for a private interview, similar to separate interviews with over half of the other 10 employees wherein coercive means to discourage unionization of the employees were applied. Frommelt alluded to Marsh's long tenure of employment with the Company (11 years) and appealed to her "loyalty" in resisting the Union. Notwithstanding this appeal, Marsh manifested an interest in union benefits in a discussion she initiated with management in early May, stating that benefits provided by the Company did not compare favorably with those provided by a union contract (*supra* p. 6). Marsh did not explicitly proclaim her union affiliation. Her expression of union sympathy, however, was clear enough for the Company to suspect her capacity for the "loyalty" which management had requested from her.

Subsequently, Marsh was implicated in mailing one set of returned goods in separate packages when they

could have been freighted together 7 or 8 dollars cheaper. Store Manager Frommelt immediately reacted in a manner unprecedented in his long relationship with Marsh, who had been responsible for many shipments over a long period of time. His reprimand in a public area of the store was so intemperate as to cause Marsh to telephone her doctor and to respond to the doctor's request to come to his office. Marsh reported to Floorlady Duncan that she was leaving, since neither the store manager nor the assistant manager was available in the store.[14] She returned to the store after a 20-minute absence from work, and confronted Frommelt to complain of the treatment accorded her. Frommelt summarily discharged her because of her absence, without inquiring why she had left the store (*supra*, p. 7).

The evidence of record shows that the Company had no rigid rule with respect to short absences from work. Nor was the store policy inflexible concerning when an employee should sign out on his time card for an absence during working hours (Tr. 227). Marsh's short absence to visit her physician for treatment resulted from John Frommelt's unprecedented public reprimand for a minor mistake. Because neither Frommelt was available at the time of her leaving, Marsh reported to a responsible individual in the store. Her absence was thus of the Company's own making, was taken with sensible precautions and,

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[14] Pursuant to Marsh's request (*supra*, p. 7), Store Manager John Frommelt was advised of her absence as soon as he returned to the store (Tr. 170, 283).

surely, her attempt on return to voice a protest over Frommelt's outburst reasonably warranted management's toleration. As the Fourth Circuit stated in *N.L.R.B.* v. *M & B Headwear Co.*, 349 F. 2d 170, 174: "An employer cannot provoke an employee to the point where she commits . . . an indiscretion . . . and then rely on this to terminate her employment. . . . The more extreme an employer's wrongful provocation the greater would be the employee's justified sense of indignation and the more likely its excessive expression . . . ." Accord: *N.L.R.B.* v. *Mrak Coal Co.*, 322 F. 2d 311 (C.A. 9); *N.L.R.B.* v. *A.P.W. Products Co.*, 316 F. 2d 899, 904 (C.A. 2); *N.L.R.B.* v. *Morrison Cafeteria Co.*, 311 F. 2d 534, 538 (C.A. 8).

It is also significant that the record further shows that no other employee had ever been discharged for the offense of unauthorized absence from work, if, indeed, the absence under these circumstances may fairly be characterized as unauthorized. See, e.g., *N.L.R.B.* v. *Wix Corp.*, 336 F. 2d 824, 826 (C.A. 4). Moreover, other than an incident involving theft, no other employee had been discharged during the period of time pertinent to this proceeding, or for the past 3 years (Tr. 241-242). Cf. *Aeronca Mfg. Co.* v. *N.L.R.B.*, *supra*, —— F. 2d at ——, 66 LRRM at 2576. And in these circumstances, "[T]he fact that [Marsh was] abruptly discharged without warning is itself sufficient to make the alleged discharge for cause suspect . . ." *N.L.R.B.* v. *Dant*, 207 F. 2d 165, 168 (C.A. 9). Further, as the Trial Examiner noted (R. 28), the penalty of discharge for an employee of

such long tenure because of a 20-minute absence was "much out of proportion to her offense." This served to enhance the possibility that resort to the ultimate penalty of discharge would be a potent reminder to employees that management had this power to thwart the organizational effort, as, it is not contested, Frommelt had unlawfully threatened.[15]

In sum, the Company's action is not explained on the basis of the evidence it offered, while the evidence as a whole points to a discharge action taken in reprisal against the employee who had openly revealed herself as a Union supporter and appeared unshaken by management's resort to unlawful means to dissuade employees from union representation. The inference that Marsh's termination was motivated by her union adherence gains strong support from the failure of the reason advanced by the Company to withstand scrutiny. See, *N.L.R.B.* v. *Dant, supra*, 207 F. 2d at 167. Accord: *N.L.R.B.* v. *Griggs Equipment, Inc.*, 307 F. 2d 275, 278 (C.A. 5). "Nor is the trier of fact . . . required to be any more naif than is a judge. If he finds that the stated motive for a discharge is false, he certainly can infer that there is another motive. More than that, he can infer that

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[15] See, e.g., *N.L.R.B.* v. *McCormick Longmeadow Stone Co.*, 374 F. 2d 81, 82 (C.A. 1); *N.L.R.B.* v. *Superex Drugs, Inc.*, 341 F. 2d 747, 748-749 (C.A. 6); *N.L.R.B.* v. *Eastern Massachusetts Street Railway Co.*, 235 F. 2d 700, 708 (C.A. 1), cert. denied, 352 U.S. 951, for the principle that excessive penalties for minor violations during an organizational effort give support to a finding that the penalties were imposed because of union activity.

the motive is one that the employer desires to conceal —an unlawful motive—at least where, as in this case, the surrounding facts tend to reinforce that inference." *Shattuck Denn Mining Corp.* v. *N.L.R.B.*, *supra*, 362 F. 2d at 470. The Board, we submit, could draw that inference here, and reasonably conclude that this senior employee and advocate of union representation was not discharged for the reason given, but to discourage membership in or activities on behalf of the Union. *Aeronca Mfg. Co.* v. *N.L.R.B.*, *supra*, —— F. 2d at ——, 66 LRRM at 2576. Cf. *N.L.R.B.* v. *West Coast Casket Co.*, 205 F. 2d 902, 907 (C.A. 9); *N.L.R.B.* v. *Southern Desk Co.*, 246 F. 2d 53, 53-54 (C.A. 4); *N.L.R.B.* v. *West Side Carpet Cleaning Co.*, 329 F. 2d 758, 761 (C.A. 6); *N.L.R.B.* v. *Solo Cup Co.*, 237 F. 2d 521, 524-525 (C.A. 8). The Board's order, therefore, should be enforced. *N.L.R.B.* v. *Globe Wireless, Ltd.*, 193 F. 2d 748, 752 (C.A. 9), enforcing 88 NLRB 1262, 1269.

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

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December 1967.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and, in his opinion, the tendered brief conforms to all requirements.

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APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * *

Prevention of Unfair Labor Practices

* * * *

[Sec. 10]

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that

any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * * In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

* * * *

(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and

to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, it member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record . . . . Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the . . . Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

APPENDIX B

This appendix is prepared pursuant to Rule 18(f) of the Rules of this Court. References are to pages of the original transcript of record.

GENERAL COUNSEL'S EXHIBITS

No.	Identified	Offered	Received in Evidence
1(a) - 1(f)	6	5	6
2	8	8	8
3	14	14	14
4	35	35	35
5(a) - 5(c)	149	148	149
6	298	298	298
7	434	434	434

RESPONDENT'S EXHIBITS

1	256	256	256
2	299	302	303

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